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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V

Bills introduced in the Constituent Assembly of India (Legislative), Reports of Select Committees presented to the Constituent Assembly of India (Legislative) and Bills published under Rule 39 of the Constituent Assembly (Legislative) Rules of Procedure and Conduct of Business.

GOVERNMENT OF INDIA

CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)

The following Report of the Select Committee to which the Bill to consolidate and amend the law relating to Banking Companies, was presented to the Constituent Assembly of India (Legislative) on the 1st February, 1949:—

WE, the undersigned, members of the Select Committee to which the Bill to consolidate and amend the law relating to banking companies was referred, have considered the Bill, the evidence tendered by the delegation of the Indian Banks Association, headed by Sir Homi Mody, and the papers* noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed hereto.

*Memorandum containing the views of the delegation of Indian Banks Association.

We considered the possibility of extending the scope of the Bill to cover partnerships or individuals carrying on banking business but found the same constitutional objections as were present before the previous Select Committee.

Upon the changes proposed by us which are not formal or consequential we note below.

Clause 1.—Most of the Acceding States have acceded to the Dominion in respect of all matters in Lists I and III in the Seventh Schedule to the Government of India Act, 1935, and we have therefore revised this clause in accordance with the formula now adopted so as to make the Act applicable, to the extent to which it can be made applicable, to all such Acceding States.

Clause 4.—We think that copies of notifications issued by the Central Government under sub-clause (3) should be laid on the table of the Dominion Legislature so that it may have an opportunity to consider any extensions granted under this clause.

Clause 5.—The mere acceptance of deposits by companies, like textile mills, etc., for the purpose of financing their own businesses should not be regarded as "banking" within the meaning of this Act, and although we are given to understand that this would be so even under the existing definition of "banking", we have thought it advisable to make the legal position clear by adding an *Explanation* to this effect in the definition of "banking company".

In the definition of "managing agent" we have added the words "or by virtue of the memorandum or articles of association relating thereto", as it is possible that a person may be entitled to the management of the affairs of a banking company under its memorandum or articles of association.

We have recast item (c) as a separate sub-clause.

Clause 6.—We have made one or two slight drafting changes, and have omitted the words "whosoever incorporated", in sub-clause (2) as well as in various other clauses where they are superfluous.

Clause 7.—We see no reason why existing banks should be exempted from having to use as part of their name, one of the words "bank", "banker" or "banking", if they actually carry on the business of banking. We have, therefore, omitted the proviso to sub-clause (1) and, incidentally, have recast the whole of this clause so as to bring out the prohibitions contained therein more prominently.

(Old Clause 8.)—It has been pointed out to us that this clause will have the effect of prohibiting banking companies from allowing to companies any kind of demand advances by whatever name called, whether loan, overdraft or cash credit, and this obviously was not the intention of the previous Select Committee which inserted this provision. Further, it seems to be unnecessary to include in a Bill for the regulation of banking companies, a prohibition as respects demand deposits on companies which to the knowledge of the lender are not banking companies and of the nature of the business of which he is aware. We have therefore omitted this clause.

Clause 8 (old clause 9).—The first day of January, 1949, was the date on which the Bill was expected previously to come into force. We have now substituted for that date the formula "the date of commencement of this Act".

Clause 9 (old clause 10).—The use of the words "being assets in respect of which it is not lawful under the said sections for the company to transact business" is not appropriate in view of the business which banks are allowed to transact. We have therefore recast this clause so as to specify clearly what transactions banks are prohibited from carrying on.

Clause 10 (old clause 11).—It has been represented to us that the prohibition of the employment by a banking company of any person who is engaged in any other business or vocation would prevent banking companies from employing part-time employees, like legal advisers and so on, which the framers of the Bill did not intend. We also think that a person who has been adjudicated insolvent or has been convicted of any offence involving moral turpitude should not be employed by any banking company. We also think that the requirement as to the renewal or extension for a further period of contracts of management being subject to the approval of the shareholders should be omitted because we fear that the continuity of policy and the integrity of administration of banking companies may thereby be adversely affected.

We have recast the whole of this clause in the light of the above.

Clause 11 (old clause 12).—As this clause was somewhat involved, we have redrafted it without making any changes of substance. It now appears as two separate clauses.

Clause 15.—In our opinion, the question of limitation of dividends should be considered with reference to companies generally and it is not desirable to make a separate provision for banking companies alone on this matter in anticipation of any general decision that may be arrived at. At present the subject matter of limitation of dividends is regulated by an Ordinance. We have therefore omitted sub-clause (2).

Clause 17.—The words “net profits” have been defined in section 87C of the Indian Companies Act, 1913, and we have therefore substituted this expression for the expression “declared profits” which has not been defined.

Clause 19.—We think that the reduction as respects the holding of shares in any company by a banking company from 40 per cent. as provided in the Indian Companies Act, 1913, to 20 per cent. which was made to prevent banking companies from acquiring control over non-banking companies, would in effect unduly interfere with the legitimate business of banks and might also introduce an element of uncertainty in the credit arrangements of banks with investors and stock brokers. The majority of us are therefore of the opinion that the percentage should be restored to 40.

Clause 20.—It has been represented to us that the prohibition in respect of unsecured loans made to a private company any director of which is also a director of the banking company advancing the loan would have the effect of compelling the private company to divert all its business to other quarters, and this, in our opinion, is certainly not desirable. On the other hand, we think that the prohibition should apply to any individuals, firms or private companies in cases where any of the directors of the banking company is a guarantor.

Clause 21 is new. We think it desirable that the Reserve Bank should be given powers to give directions to banks in regard to their lending policies so that, where necessary, credit facilities may be controlled with a view to checking speculation or rising prices.

Clause 22 (old clause 21).—As a matter of drafting we have recast sub-clauses (1) and (2).

Clause 24 (old clause 23).—We have redrafted sub-clause (1), and in sub-clause (2) we have added the words “or its agent” so that balances maintained with any agent of the Reserve Bank may also be regarded as part of the liquid assets.

Clause 25 (old clause 24).—We have made some small drafting amendments, and in the definition of “assets” we have included import bills drawn on and payable in India.

Clause 36 (old clause 35).—We have redrafted sub-clause (1). In item (d) we have made it clear that the Reserve Bank may, if it so desires, take the action prescribed in this item even during the course of an inspection.

Clause 37 (old clause 36).—We think that where the Court acts *suo motu* under the proviso to sub-clause (2) it should be required to call for a report from the Reserve Bank on receipt of which any order already passed may either be rescinded or modified.

Clause 39 (old clause 38).—In our opinion it would be impracticable, at the present moment, for the Reserve Bank to undertake the liquidation of all banking companies ordered to be wound up. We have no doubt that the Reserve Bank would be willing to undertake the liquidation of banking companies in cases where large public funds are involved. We think that it should be left to the Reserve Bank to apply in suitable cases for being appointed as official liquidator in winding up proceedings. This clause has been redrafted accordingly.

Clause 45 (old clause 44).—We have slightly modified sub-clause (a) as we think that the certificate of the Reserve Bank should be a pre-requisite for the actual sanctioning of the compromise or arrangement and not for the entertainment by the Court of an application in that behalf.

(*Old Clause 50*).—This provision is no longer necessary as almost all Acceding States have acceded to the Dominion in respect of bunking and clause 1(2) has already made the necessary provision in this behalf.

Clause 52.—In our opinion the Bill should be brought into force as early as possible and therefore the condition of previous publication should not apply in respect of the first occasion on which rules are made. This clause has been modified accordingly.

Clause 53.—This is a provision which we have added as a matter of caution. It is possible that exemptions may be needed in the case of industrial finance corporations, land mortgage banks, housing societies, and other like institutions which obtain deposits from the public. This provision would also enable temporary relief to be given in cases of emergency.

Clauses 54 and 55.—We have transferred all provisions relating to amendments and repeals to the First and Second Schedules.

2. The Bill was published in the Gazette of India, Part V, dated the 8th April, 1948.

3. We think that the Bill has not been so altered as to require circulation under Rule 49 (3) of Rules of Procedure and Conduct of Business, and we recommend that it be passed as now amended.

B. R. AMBEDKAR.

JOHN MATTHAI.

*T. T. KRISHNAMACHARI.

*K. T. SHAH

B. L. SONDEL.

U. SRINIVASA MALLAYYA.

T. A. RAMALINGAM CHETTIAR.

JASPAT ROY KAPOOR.

PRABHU DAYAL HIMATSINGKA.

ARUN CHANDRA GUHA.

T. CHANNIAH.

G. DURGABAI.

*M. ANANTHASAYANAM AYYANGAR.

DHARAM PRAKASH.

B. PATTABHI SITARAMAYYA.

K. CHALIHA.

NEW DELHI;
The 1st February, 1949.

* Subject to a Minute of Dissent.

MINUTES OF DISSENT

1

Clause 6(j)—

(1) In Clause 6(j) amongst the several forms of business in which banking companies might be permitted to engage, enumerated therein, is included "subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public or useful object." This in my opinion is outside the scope of normal banking business and in any case the guaranteeing part of it is a risk that a banking company ought not to undertake.

Clause 12—

(2) The new clause 12 is sought to be applied only to banking companies incorporated after the 15th day of January, 1937. In so far as the requirements in regard to capital structure of banking companies I see no serious objection to the proviso to this clause limiting the application of this clause to institutions which are less than twelve years old. My objection to this limitation is in regard to the application of sub-clause (iv) only to the younger institutions. Concentration of shares in the hands of a few persons is not an evil that is peculiar to banking companies which have been incorporated after January, 1937. It exists in an equal degree in the older companies. This fact was admitted by the leader of the Bankers' Deputation though such an admission was made on a question put to him in connection with a different provision in the Bill. In my opinion the degree of concentration permitted even in regard to the younger institutions is very high as I consider that the voting rights of any one share-holder should not exceed $2\frac{1}{2}$ per cent. of the total voting rights of all the share-holders, and this restriction must be made applicable to all banking companies irrespective of their age. If it is the intention of the Legislature to allow a few persons to continue to control the working of banking companies this legislation may well be dropped.

Clause 15—

(3) In regard to the omitting of sub-clause (2) of clause 15, I am unable to agree to the views expressed by the majority of the Committee. I emphatically disagree with the view that the question of limitation of dividends should be considered with reference to companies generally and that it is undesirable to make a separate provision in regard to banking companies. Such a view, in my opinion, runs counter to the whole scheme of the Bill. I am for limitation of dividends being made applicable to all banking companies old and new alike. With a measure of the nature of the Bill coming into operation the risks involved in investment in the shares of banking companies would be considerably minimised and a limitation of the dividend payable on the shares of banking companies would cause no injury to investors in such shares. The argument that there is now in existence an Ordinance limiting dividends payable by all types of companies is beside the point as I do not believe it is the intention of Government to make this Ordinance a permanent feature.

Clause 19(2)—

(4) The action of the Select Committee in restoring the position as it now obtains in the Indian Companies Act in the matter of a company holding as owner pledgee, etc., over 40 per cent. of the shares of any company, etc., is in my view unwise. I feel that the limit of 20 per cent. provided in the Bill was itself very high and no reasonable grounds have been advanced before the Committee to justify this change.

Even though I have appended my signature to the majority report I am of the opinion that the Committee has done little or nothing to improve the Bill

and have thereby lost a valuable opportunity of helping to place on the Statute-book a measure which would ensure the strengthening of the credit and monetary structure in the country.

NEW DELHI;

T. P. KRISHNAMACHARI

The 1st February, 1949.

II

I want the retention of the clause relating to the limitation of dividends. The accounts of foreign banks also should be audited by a registered accountant or an auditor of India. I am opposed to any power being given to the Government to exempt any banks from the operation of the provisions of this Act as is provided for in clause 53

NEW DELHI;

M. ANANTHASAYANAM AYYANGAR.

The 1st February, 1949

III

1. I regret I cannot sign the majority Report of the Select Committee on this Bill, as my differences are fundamental. They affect the basis as well as structure of the proposed legislation; and so cannot be reconciled by verbal changes in the several clauses of the Bill. The principle accepted by the House, when it appointed the Select Committee, was that the law relating to banks and banking be consolidated; and not that the principles underlying the several provisions of this Bill be accepted. This note is, accordingly relevant and appropriate.

2. The Bill is styled to be "A Bill to consolidate and amend the law relating to banking companies." Notwithstanding this title and preamble, considerable sectors of the banking business are left out of the purview of the proposed legislation. The Bill does not pay any attention to the entire system of private banking, including money-lending, which is not conducted by a joint-stock company. This seems to be an arbitrary distinction, and needlessly restricts the scope of the legislation, which cannot therefore, be correctly described as a consolidating Bill.

3. There is, I understand, constitutional reason against the inclusion of this sector of banking within the scope of this Bill, which is said to lie within the provincial sphere, and not of the Central Legislature. This objection seems to me invalid, when we set out expressly to enact an integral, comprehensive, organic legislation. Even if constitutional reasons stood in the way, a really "consolidating" measure, applicable to the whole country, may be undertaken by agreement with the component parts of the Union, assuming that the constitution, as it stands, does not allow the Central Legislature to undertake such a measure. If such an agreement between the Units and the Centre is not possible, and I see no justification for such an assumption, it must be remembered that we are, at this moment, making the constitution of Free India; and if at this moment, such snags are discovered while overhauling and consolidating such important legislation, there is no reason why the necessary and appropriate amendments be not introduced in the relevant Articles in the Draft Constitution when they come up for discussion and adoption.

4. If this artificial division is left between private or individual proprietary or partnership banking, and money-lending on the one hand, which is left to be legislated for by the units, while the legislation for organised, joint-stock banking is entrusted to the Central Legislature, the result would only be an evasion of the law which ever it aims at effective control, scientific co-ordination, and adequate safeguard. We must not permit such loopholes for evading the law to remain, if we perceive them while considering such proposals.

5. The constitutional objection, it may be added, is founded, I understand, only on an opinion of the law officers. It is not a judicial decision which may be taken as binding. The Constituent Assembly, moreover, being a sovereign body, can easily overcome this obstacle, even if it is conceded to be the real reason for thus dividing up the functions of the Legislatures in the country, and creating an unnatural, unwarrantable distinction in the several forms of banking organisation, for purposes of legislation, merely on the ground of a formal difference in organisation, *i.e.*, whether a joint-stock company, or a private concern. Besides, there seems nothing to prevent the law making it compulsory for all banking business to be organised as a joint-stock concern, so that the consolidated law should apply uniformly throughout the country.

6. The main purpose of the proposed legislation seems to be to safeguard the interests of the depositors. It is legitimate and proper that those interests be duly and adequately safeguarded. Banking is dealing in other people's money; and it is but right that the interests of the latter be safeguarded. But the Bill does not effectually safeguard those interests, as I read its provisions. The entire management and policy of each banking institution is, under this proposal, left in the hands of the Directors, who represent only the proprietors. The qualifications for being elected or appointed Director of a bank is not any knowledge, understanding or experience of Banking business, but the mere holding of minimum number of shares prescribed as essential for being a candidate to a bank directorship. Even if they are qualified by knowledge and experience they are, primarily, representatives and nominees of shareholders, with whom they have the subconscious sympathy of the class identity of interests.

7. It may also be added that no provision is made in the Bill to see that only those persons shall be placed in responsible posts in a bank, who are properly qualified by knowledge, experience, or training. No room should be left in this great service of public utility for nepotism of any sort. Power should be given to the Reserve Bank to prescribe by rules the qualifications by way of knowledge, experience, or training in the essence as well as routine of banking business, which should be expected of persons to be appointed or elected managers, Branch Inspectors, Accountants or Directors.

8. No other person, body, or authority discharges the function of guardian for the depositor's interests. The powers vested in the Reserve Bank, even assuming they are adequate effectually to protect and safeguard the interests of the depositors, will come into operation only when the mischief has already been done. In the day-to-day conduct of the business of banking company, the Reserve Bank, or the Government or even the Legislature, will have no right to intervene to protect the public, the depositor or even the shareholder. The harm to the interests of the parties concerned, particularly the depositor, is usually done by the negligent, hazardous, or even dishonest management of the company or inefficient conduct of its business. The briefest glance at any case of bank frauds will suffice to establish this proposition.

9. The depositors should, therefore, be given the right to appoint their own directors,—in such number of proportion the Legislature deems proper, if their interests are to be effectively, adequately and permanently safeguarded.

Both principle and precedent are in favour of this suggestion. The insurance legislation, for instance has provided a Director to look after the policy holders' interests; and depositors in a bank correspond in a large degree to the policy holders in an Insurance Concern. Even in an ordinary industrial and commercial Company, where borrowed capital formally secured plays an important role in financing the business, a debenture trustee is a Director of such a concern. Following this analogy, I would advocate the election or appointment of some Directors to represent depositors,—whether demand or fixed.

10 The deposit holder, however, is not only party concerned, in the successful operation of a banking business. Success in that business is not to be estimated by the size of the dividend only, or even the Reserve Fund. We must view banking as an integral and important public utility and social service, a part of the aggregate national economy, which has a vital role to play in the material development of the country, its resources and also its potentialities. The Bill, however, shows no conception of this wider viewpoint, these larger, long-range interests, even though it is styled a consolidating measure. If this wider objective is to be fully achieved provision should be made for the appointment of a Director by the Reserve Bank of India, as representing the country, to serve on the Board of Directors of every bank, and so be aware of the policy and business of each such institution, and be in a position to prevent any malpractice before it becomes too late to mend matters. This is all the more desirable and necessary if one takes banking to be a public utility of vital importance in the long-range economic development of the country.

11 In the banking business of to-day, agricultural financing is wholly ignored, even though agriculture is the largest single industry, the greatest source of wealth production, the largest field for employment. The Co-operative Credit Society and Land Mortgage Banks, which may be said to be concerned with this business, are specifically excluded from the purview of this measure; while not a mention is made of the industrial finance for which there is no bank in India to-day, apart, of course, from the Statutory Industrial Finance Corporation recently set up by special legislation. Neither the Co-operative Credit Society nor the Land Mortgage really aid directly or actively in stimulating agricultural production. And Government sponsored Industrial Finance Corporation, viewed in the present setting of the banking as a private enterprise ministering to private industry or commerce, is likely to find itself out of harmony with the general economic background. It has in any case to be seen how far it really stimulates new industry being established, or existing ones being expanded. Pending that growth, industrial financing must be a lacuna in our credit organisation; and the "consolidating" (sic) legislation does nothing to fill it. Amendment is, accordingly, necessary to rectify this omission, or restriction of the scope of the proposed legislation.

12. Legislation is not intended only to regulate that which is; it would also stimulate that which should be, and provide for it when it comes into being. The country, its productive resources and potentialities, have suffered grievously in the past for lack of specialised type of banking, agricultural or industrial, for production as well as distribution. The fact, however, that we have under British influence or model, not developed such types of banking institution does not argue the needlessness of such banks, or of legislation to regulate and control it. The Bill, which purports to "consolidate" all legislation on banking, must be pronounced to be fundamentally defective, if it leaves out of account such an integral necessity of the country's economy. There is no proposal, likely to come before the Legislature in the near future, for establishing, in the same milieu in which other banks work to-day, such specialised type of banking in the country. The plea, therefore, that for that type separate legislation would be brought forward, would be irrelevant, even

assuming that such an argument would not prejudice the claim of this legislation to be regarded as "consolidating" the law on the subject.

13. The law on the subject, it may be added in passing, is not contained in its fullness in the Bill under Report. Not only are the various types of specialised banks and their activities regulated by separate legislation, *e.g.*, Reserve Bank, Imperial Bank, Co-operative Bank, etc., the very organisation of an ordinary commercial bank, to which this Bill mainly relates, and the regulation of its activities has to be found in other legislation, like the Companies Act or the Negotiable Instruments Act. This also detracts from the claim of the proposed legislation to be consolidating Act.

14. The use of the bank as an active agent in the all-round development of the country, including its trade (both local and international), industry, agriculture, forestry and mining—all facets of production as well as distribution of wealth,—is hardly contemplated in the proposed measure. It must, therefore, be treated as lacking in essential particulars. Banks must be organised, and their business defined, regulated, controlled and supervised, so that they become an active agent in the promotion of the country's well-being. It is only then that there would be universal need and justification for the several provisions relating to control, supervision, regulation, or restriction of a bank's business from some central authority, like the Reserve Bank, in the collective interest of the community. As these provisions stand to-day, they would require amendment, if this objective is to be attained.

15. The view that banking is a great public utility and an integral social service in a modern national economy, which cannot be left for ever in private hands without serious prejudice to the all-round and maximum possible development of the resources of the country, is likewise conspicuous by its absence from the provisions of this Bill. No clause is inserted to secure an eventual socialisation of this service, Utility or Enterprise in its aggregate, or individually. Far more interests are involved in its sound conduct than those of the proprietors, or depositors, neither of whom have any active interest in the working of a bank. Amendments must, accordingly, be inserted which would facilitate the acquisition by the State of any, or all, banking concerns to be owned and operated as public enterprise in the interests of the country as a whole.

16. No mention is, likewise made of the possibility of developing yet other types of banks, like a Municipal Bank, which would be a far cheaper device that would more effectively and universally popularise banking habit among the people than any provisions of this measure. Banking is very backward in this country; and so any development that is calculated to encourage its expansion should be welcomed. Clauses in the present Bill, which relate to the form or functions of a bank, and the lines of business it may deal in, will consequently have to be amended, if the service is to be made available to the largest possible number of people, and if the service itself is to be as wide and full and varied as we can possibly make it.

17. The Bill is, in fact, replete with apprehension or misgivings regarding the extension of branches of banks or foundation of new banks. It seems to consider it dangerous and undesirable that banks should multiply or branchify—even of the standard commercial type. The advent of new banks or increase of branches of existing banks may be a sign of danger from the point of view of depositors, of unsound methods of business; but they are indispensable for the effective development of the country's resources. The law should, indeed, see that any unsound practice is prevented rather than branch banking be stopped, or increase in the number of existing bank branches is prevented.

18. There are obvious objections to excessively concentrated banking in a few gigantic companies, with a larger number of branches each. At the same time, I recognise the difficulty of wholly decentralised banking, where in each town or centre of large population and industries would have its own bank or banks. But whether we adopt a decentralised system with a large number of independent banks or centralised banking, few in number but each of them with a large number of branches, legislation governing it must see that the banking service is extended as much as possible, and its benefit made available to as large a public as possible, in industry as well as commerce, in production as well as distribution.

19. Because the real, crucial, vital importance of the role of banks in developing national economy of a dynamic society with immense potentialities is not perceived, the Bill is confined only to companies registered in India, to which the Companies Act would apply for purposes of winding up. This would leave out a very considerable sector of Banking Enterprise in the country from the effective control of this legislation, and therefore of the Reserve Bank of India. The so-called Exchange Banks, which operate in India but are registered outside will be, under this Bill, exempt from such control and supervision as would be possible to exercise under the law to make all banks follow a measure of common policy. The harm done by these institutions to India's industry and productive capacity; the obstruction these institutions have always caused to even the political emancipation of this country, and the insistence they had laid on the provision of specific safeguards, in the Government of India Act, 1935, against any discrimination by Government or legislation in favour of indigenous enterprise, must be sufficiently fresh in men's minds to justify, and even necessitate, the provision of special safeguard against the recurrence of mischief these banks are still in a position to do. The law must accordingly, apply to the institutions registered abroad but operating in India, no less fully than to the indigenous banks of every type. In proportion as such indispensable provisions are left out, the proposed legislation must be deemed to be defective.

20. The functions of a soundly developed and scientifically operated banking system, in devising ways and means to popularise banking, economise currency, stabilise prices, mobilise investable capital or savings, develop credit, and otherwise maintain the economic system of a dynamic society on an even keel, are also not fully realised in the proposed consolidating Bill. The possibility of the banking system inventing special devices of making payments within the country, free of charge now levied; the introduction of such instruments, methods of technique of payments as the Giro System and the postal cheque and the extension of banking habit to every worker and peasant in the country are still to be fully perceived and given effect to in and by means of such legislation.

K. T. SHAH.

NEW DELHI:

The 1st February, 1949

A. BILL No. 27 OF 1948.

[AS AMENDED BY THE SELECT COMMITTEE]

(Words side-lined or under-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

to consolidate and amend the law relating to banking companies.

WHEREAS it is expedient to consolidate and amend the law relating to banking companies;

It is hereby enacted as follows:—

PART I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Banking Companies Act, 1949.

(2) It extends to all the Provinces of India, and also to every Acceding State to the extent to which the Dominion Legislature has power to make laws for that State as respects banking.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Indian Companies Act, 1913 (VII of 1913), and any other law for the time being in force.

3. Act not to apply to co-operative banks.—Nothing in this Act shall apply to a co-operative bank registered under the Co-operative Societies Act, 1912 (II of 1912), or any other law for the time being in force in any Province of India, relating to co-operative societies.

4. Power to suspend operation of Act.—(1) The Central Government, if on a representation made by the Reserve Bank in this behalf it is satisfied that it is expedient so to do, may by notification in the official Gazette suspend for such period, not exceeding sixty days, as may be specified in the notification, the operation of all or any of the provisions of this Act, either generally or in relation to any specified banking company.

(2) In a case of special emergency, the Governor of the Reserve Bank, or in his absence a Deputy Governor of the Reserve Bank nominated by him in this behalf may, by order in writing, exercise the powers of the Central Government under sub-section (1) so however that the period of suspension shall not exceed thirty days, and where he does so, he shall report the matter to the Central Government forthwith, and the order shall, as soon as may be, be published in the Gazette of India.

(3) The Central Government may, by notification in the official Gazette, extend from time to time the period of any suspension ordered under sub-section (1) or sub-section (2) for such period, not exceeding sixty days at any one time, as it thinks fit so however that the total period does not exceed one year.

(4) A copy of any notification issued under sub-section (3) shall be laid on the table of the Dominion Legislature as soon as may be after it is issued

5. Interpretation.—(1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "approved securities" means securities in which a trustee may invest money under clause (a), clause (b), clause (bb), clause (c) or clause (d) of section 20 of the Indian Trusts Act, 1882 (11 of 1882), and such securities of, or fully guaranteed by, Acceding States as the Reserve Bank may be authorised to purchase under clause (8) of section 17 of the Reserve Bank of India Act, 1934 (11 of 1934);

(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;

(c) "banking company" means any company which transacts the business of banking in any Province of India;

Explanation—Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

(d) "company" means any company which may be wound up under the Indian Companies Act, 1913 (VII of 1913),

(e) "Court" means the Court having jurisdiction under the Indian Companies Act, 1913;

(f) "demand liabilities" means liabilities which must be met on demand, and "time liabilities" means liabilities which are not demand liabilities;

(g) "gold" includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not;

(h) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company or by virtue of the memorandum or articles of association relating thereto, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, memorandum or articles of association, and includes any person, firm or company occupying such position by whatever name called;

Explanation.—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing agent for the purposes of this Act;

(i) "private company" has the same meaning as in the Indian Companies Act, 1913;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "registrar" has the same meaning as in * * * the Indian Companies Act, 1913;

(l) "Reserve Bank" means the Reserve Bank of India;

(m) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934; and

(n) "secured loan or advance" means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance; and "unsecured loan or advance" means a loan or advance not so secured.*

* * * * *

(2) In the application of this Act to Acceding States all references to the Provinces of India shall be construed as including references to the Acceding States to which this Act extends

PART II

BUSINESS OF BANKING COMPANIES

6. Forms of business in which banking companies may engage.—(1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely:—

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;

(b) acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent of a company;

(c) contracting for public and private loans and negotiating and issuing the same;

(d) the effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(e) carrying on and transacting every kind of guarantee and indemnity business;

(f) managing, selling and realising any property * * * * * which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(g) acquiring and holding and generally dealing with any property or any right, title or interest in any such property * * * * * which may form part of the security for any loans or advances or which may be connected with any such security;

(h) undertaking and executing trusts;

(i) undertaking the administration of estates as executor, trustee or otherwise;

(j) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

(k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(l) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(m) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub-section;

(n) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;

(o) any other form of business which the Central Government may, by notification in the official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

(2) No banking company * * * shall engage in any form of business other than those referred to in sub-section (1).

7. Use of words "bank", "banker", "banking".—After the expiry of two years from the commencement of this Act no company, other than a banking company, shall use as part of its name, any of the words "bank", "banker" or "banking" and no company shall carry on the business of banking in any Province of India, unless it uses as part of its name at least one of such names.

Provided that nothing in this section shall apply to any association of banks formed for the protection of their mutual interests and registered under section 26 of the Indian Companies Act, 1913 (VII of 1913)

* * * * *

8. Prohibition of trading.—Notwithstanding anything contained in section 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade, or buy or sell or barter goods for others otherwise than in connection with bills of exchange received for collection or negotiation or with such of its business as is referred to in clause (i) of sub-section (1) of section 6:

Provided that this section shall not apply to any such business as aforesaid which was in the course of being transacted on the commencement of this Act, so however, that the said business shall be completed before the expiry of one year from such commencement. * * *

Explanation.—For the purposes of this section, "goods" means every kind of movable property, other than actionable claims, stocks, shares, money, bullion and specie, and all instruments referred to in clause (a) of sub-section (1) of section 6.

9. Disposal of non-banking assets.—Notwithstanding anything contained in sections 6 and 8, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be:

Provided that the banking company may, within the period of seven years as aforesaid, deal or trade in any such property for the purpose of facilitating the disposal thereof:

Provided further that the Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

10. Prohibition of employment of managing agents and restrictions on certain forms of employment.—(1) No banking company—

(a) shall employ or be managed by a managing agent, or

(b) shall employ any person—

(i) who is or at any time has been adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is or has been convicted by a criminal Court of an offence involving moral turpitude; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company; or

(iii) whose remuneration is on a scale disproportionate, according to the normal standards prevailing in banking business, to the resources of the company, or

(c) shall be managed by any person—

(i) who is a director of any other company, not being a subsidiary company of the banking company, or

(ii) who is engaged in any other business or vocation; or

(iii) who has a contract with the company for its management for a period exceeding five years at any one time:

Provided that the said period of five years, shall, in relation to contracts subsisting on the 1st day of July, 1944, be computed from that date:

Provided further that any contract with the company for its management may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors so decide

(2) If any question arises in any particular case whether remuneration is on a scale disproportionate, according to the normal standards prevailing in banking business, to the resources of the company for the purpose of sub-clause (iii) of clause (b) of sub-section (1), the decision of the Reserve Bank thereon shall be final for all purposes.

11. Requirement as to minimum paid-up capital and reserves.—(1) Notwithstanding anything contained in section 103 of the Indian Companies Act, 1913 (VII of 1913), no banking company in existence on the commencement of this Act, shall, after the expiry of three years from such commencement or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the company, may think fit in any particular case to allow, carry on business in any Province of India, and no other banking company shall, after the commencement of this Act, commence or carry on business in any Province of India, unless it has paid-up capital and reserves of such aggregate value as is hereinafter required by this section.

(2) In the case of a banking company incorporated elsewhere than in a Province of India, the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees, and, if it has a place or places of business in the City of Bombay or Calcutta or both, twenty lakhs of rupees:

Provided that no such banking company shall be deemed to have complied with the provisions of this sub-section, unless it deposits and keeps deposited with the Reserve Bank an amount not less than the minimum required by this sub-section either in cash or in unencumbered approved securities or partly in cash and partly in such securities.

(3) In the case of any banking company to which the provisions of sub-section (2) do not apply, the aggregate value of its paid-up capital and reserves shall not be less than—

(i) if it has places of business in more than one Province, five lakhs of rupees, and if any such place or places of business is or are situated in the City of Bombay or Calcutta or both, ten lakhs of rupees,

(ii) if it has all its places of business in one Province none of which is situated in the City of Bombay or Calcutta, one lakh of rupees in respect of its principal place of business, *plus* ten thousand rupees in respect of each of its other places of business situated in the same district in which it has its principal place of business, *plus* twenty-five thousand rupees in respect of each place of business situated elsewhere in the Province otherwise than in the same district;

Provided that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of five lakhs of rupees:

Provided further that no banking company to which this clause applies and which has only one place of business, shall be required to have paid-up capital and reserves exceeding an aggregate value of fifty thousand rupees;

(iii) if it has all its places of business in one Province, one or more of which is or are situated in the City of Bombay or Calcutta, five lakhs of rupees, *plus* twenty-five thousand rupees in respect of each place of business situated outside the City of Bombay or Calcutta, as the case may be:

Provided that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of ten lakhs of rupees.

Explanation.—For the purposes of this sub-section, a place of business situated in a Province other than that in which the principal place of business of the banking company is situated shall, if it is not more than twenty-five miles distant from such principal place of business, be deemed to be situated within the same Province as such principal place of business.

(4) Any amount deposited and kept deposited with the Reserve Bank under the proviso to sub-section (2) by any banking company incorporated elsewhere than in a Province of India shall, in the event of the company ceasing for any reason to carry on banking business in the Provinces of India, be an asset of the company on which the claims of all the creditors of the company in the Provinces of India shall be a first charge.

(5) For the purposes of this section "value" means the real or exchangeable value, and not the nominal value which may be shown in the books of the banking company concerned.

(6) If any dispute arises in computing the aggregate value of the paid-up capital and reserves of any banking company, a determination thereof by the Reserve Bank shall be final for the purposes of this section.

12. Regulation of paid-up capital, subscribed capital and authorised capital, and voting rights of shareholders.—No banking company shall carry on business in any Province of India, unless it satisfies the following conditions, namely:—

(i) that the subscribed capital of the company is not less than one half of the authorised capital, and the paid-up capital is not less than one half of the subscribed capital and that, if the capital is increased, it complies with the conditions prescribed in this clause within such period not exceeding two years as the Reserve Bank may allow;

(ii) that the capital of the company consists of ordinary shares only or of ordinary shares and such preference shares as may have been issued prior to the 1st day of July, 1944;

(iii) that, subject to the provisions contained in clause (iv) hereof, the voting rights of any one shareholder, whether a preference shareholder or an ordinary shareholder, are strictly proportionate to the contribution made by him to the paid-up capital of the company;

(iv) that the voting rights of any one shareholder do not exceed ten per cent. of the total voting rights of all the shareholders:

Provided that nothing contained in this section shall apply to any banking company incorporated before the 15th day of January, 1937.

13. Restriction on commission, brokerage, discount, etc., on sale of shares.

Notwithstanding anything to the contrary contained in sections 105 and 105A of the Indian Companies Act, 1913 (VII of 1913), no banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration in any form in respect of any share issued by it, any amount exceeding in the aggregate two and one-half per cent. of the paid-up value of the said share.

14. Prohibition of charge on unpaid capital.—No banking company shall create and charge upon any unpaid capital of the company, and any such charge shall be invalid.

15. Restrictions as to payment of dividend.—*No banking company shall pay any dividend on its shares until all its capitalised expenses (including preliminary expenses, organisation expenses, share selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets) have been completely written off.

* * * * *

16. Prohibition of common directors.—No banking company incorporated in a Province of India shall have as a director any person who is a director of another banking company.

17. Reserve fund.—Every banking company incorporated in a Province of India shall maintain a reserve fund, and shall, out of the net profits of each year and before any dividend is declared, transfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid-up capital.

Explanation.—For the purposes of this section, the expression “net profits” shall have the meaning assigned to it in sub-section (3) of section 87C of the Indian Companies Act, 1913 (VII of 1913).

18. Cash reserve.—Every banking company not being a scheduled bank shall maintain by way of cash reserve in cash with itself, or in an account opened with the Reserve Bank, or partly in cash with itself and partly in such account, a sum equivalent to at least two per cent. of its time liabilities and five per cent. of its demand liabilities and shall file with the Reserve Bank before the fifteenth day of every month three copies of a statement of the amount so held on the Friday of each week of the preceding month with particulars of its time and demand liabilities on each such Friday.

19. Restriction on nature of subsidiary companies.—(1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely, the undertaking and executing of trusts, the undertaking of the administration of estates as executor,

trustee or otherwise, the providing of safe deposit vaults or, with the previous permission in writing of the Reserve Bank, such other purposes as are incidental to the business of banking.

(2) Save as provided in sub-section (1), no banking company shall hold shares in any company, whether as pledgee, mortgagee or absolute owner, of an amount exceeding forty per cent. of the paid-up share capital of that company or forty per cent. of its own paid-up share capital and reserves, whichever is less:

Provided that a banking company shall not be liable for an inadvertent contravention of the provisions of this sub-section if it had not been guilty thereof for a period exceeding two months and if it satisfies the Reserve Bank without delay that such contravention was inadvertent:

Provided further that any banking company which is on the date of the commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefor if it reports the matter without delay to the Reserve Bank and if it brings its holding of shares into conformity with the said provisions within such period, not exceeding two years, as the Reserve Bank may think fit to allow.

(3) Save as provided in sub-section (1) and notwithstanding anything contained in sub-section (2), a banking company shall not, after the expiry of one year from the date of the commencement of this Act, hold shares, whether as pledgee, mortgagee or absolute owner, in any company in the management of which any managing director or manager of the banking company is in any manner concerned or interested.

20. Restrictions on loans and advances.—(1) Notwithstanding anything to the contrary contained in section 54A of the Indian Companies Act, 1918 (VII of 1918), no banking company shall make any loans or advances on the security of its own shares, or grant unsecured loans or advances to any of its directors or to firms or private companies in which it or any of its directors is interested as partner or managing agent or to any individuals, firms or private companies in cases where any of the directors is a guarantor.

(2) Every banking company shall, before the close of the month succeeding that to which the return relates, submit to the Reserve Bank a return in the prescribed form and manner, showing all unsecured loans and advances granted by it to companies * * * in which it or any of its directors is interested as director or managing agent or guarantor.

(3) If on examination of any return submitted under sub-section (2) it appears to the Reserve Bank that any loans or advances referred to in that sub-section are being granted to the detriment of the interests of the depositors of the banking company, the Reserve Bank may, by order in writing, prohibit the banking company from granting any such further loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may by like order direct the banking company to secure the repayment of any such loan or advance within such time as may be specified in the order.

21. Power of Reserve Bank to control advances by banking companies.—

(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to the purposes for which advances may or may

not be made, the margins to be maintained in respect of secured advances and the rates of interest to be charged on advances, and each banking company shall be bound to comply with any directions as so given.

22. Licensing of banking companies.—(1) Save as hereinafter provided, no company shall carry on banking business in any Province of India unless it holds a licence granted by the Reserve Bank in such behalf.

(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business in any Province of India, shall apply in writing to the Reserve Bank for a licence under this section:

Provided that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of sub-section (2) or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it:

~~Provided~~ further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

(3) Before granting any licence under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that all or any of the following conditions are fulfilled, namely:—

(a) that the company is in a position to pay its depositors in full as their claims accrue;

(b) that the affairs of the company are not being conducted to the detriment of the interests of its depositors;

(c) in the case of a company incorporated elsewhere than in a Province of India that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in a Province of India, and that the company complies with all the provisions of this Act, applicable to banking companies incorporated outside the Provinces of India.

(4) The Reserve Bank may—

(a) cancel any licence granted under this section where any of the conditions set out in sub-section (3) on the fulfilment of which it required to be satisfied when granting the licence ceases to be fulfilled, or if the company ceases to carry on banking business * * in the Provinces of India or goes into liquidation;

(b) at any time after granting a licence under this section require that any of the said conditions on the fulfilment of which it did not require to be satisfied when granting the licence shall be fulfilled to its satisfaction within such time as it may specify, and if the condition is not so fulfilled, cancel the licence.

(5) Any banking company aggrieved by the cancellation of its licence under sub-section (4) may appeal to the Central Government, and the decision of the Central Government on such appeal shall be final.

23. Restrictions on opening of new, and transfer of existing, places of business.—No banking company shall open a new place of business or change, otherwise than within the same city, town or village, the location of an existing place of business without obtaining the prior permission in writing of the Reserve Bank; and before giving any such permission the Reserve Bank may require to be satisfied by an inspection under section 85 or otherwise as to the

financial condition and history of the company, the general character of its management, the adequacy of its capital structure and earning prospects and that public interest will be served by the opening or, as the case may be, change of location, of the place of business:

Provided that nothing in this section shall apply to the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs thereof within which the banking company already has a place of business for the purpose of affording banking facilities to the public on the occasion of an exhibition, conference or *mela*.

Explanation.—For the purposes of this section “place of business” includes any sub-office, pay-office, sub-pay-office and any place of business at which deposits are received, cheques cashed or moneys lent.

24. Maintenance of a percentage of assets.—(1) After the expiry of two years from the commencement of this Act, every banking company shall maintain in cash, gold or unencumbered approved securities, valued at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than twenty per cent. of the total of its time and demand liabilities in the Provinces of India.

Explanation.—For the purposes of this section liabilities shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the company or the amount of any loan taken from the Reserve Bank.

(2) In computing the amount for the purposes of sub-section (1), the deposit required under the proviso to sub-section (2) of section 11 to be made with the Reserve Bank by a banking company incorporated elsewhere than in a Province of India and any balance maintained by a banking company with the Reserve Bank or its agent or both, including in the case of a scheduled bank the balance required under sub-section (1) of section 42 of the Reserve Bank of India Act, 1934 (II of 1934), to be so maintained, shall be deemed to be cash maintained.

(3) For the purpose of ensuring compliance with the provisions of this section, every banking company shall, not later than fifteen days after the end of the month to which it relates, furnish to the Reserve Bank in the prescribed form and manner a monthly return showing particulars of its assets maintained in accordance with this section, and its time and demand liabilities at the close of business on each Friday during the month, or if any Friday is a public holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), at the close of business on the preceding working day.

25. Assets in the Provinces of India.—(1) The assets in the Provinces of India of every banking company at the close of the last working day of every quarter shall not be less than seventy-five per cent. of its demand and time liabilities therein.

(2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) as at the close of the last working day of the previous quarter.

(3) For the purposes of this section,—

(a) “assets” shall be deemed to include such promissory notes, bills of exchange and securities as the Reserve Bank is, under the Reserve Bank of India Act, 1934 (II of 1934) empowered to purchase, discount or make advances against, and export bills drawn in, and import bills drawn on, and payable in India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf;

(b) “quarter” means the period of three months ending on the last day of March, June, September or December.

26. Return of unclaimed deposits.—Every banking company shall, within thirty days after the close of each calendar year, submit a return in the prescribed form and manner to the Reserve Bank as at the end of such calendar year of all accounts in the Provinces of India which have not been operated upon for ten years, giving particulars of the deposits standing to the credit of each such account:

Provided that in the case of money deposited for a fixed period the said term of ten years shall be reckoned from the date of the expiry of such fixed period

27. Monthly returns and power to call for other returns and information.—

(1) Every banking company shall before the close of the month succeeding that to which it relates submit to the Reserve Bank a return in the prescribed form and manner showing its assets and liabilities in the Provinces of India as at the close of business on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), at the close of business on the preceding working day

(2) The Reserve Bank may, by notice in writing, require a banking company at any time to furnish it within the time specified therein or such further time as the Reserve Bank may allow, with statements and information relating to the business of such banking company, and without prejudice to the generality of the foregoing power, may call for information every half-year regarding the classification of advances and investments of banking companies in respect of industry, commerce and agriculture.

28. Power to publish information.—The Reserve Bank, if it considers it in the public interest so to do, may publish any information obtained by it under section 27 in such consolidated form as it thinks fit.

29. Accounts and balance-sheet.—(1) At the expiration of each calendar year every banking company incorporated in a Province of India, in respect of all business transacted by it, and every banking company incorporated outside the Provinces of India, in respect of all business transacted through its branches in the Provinces of India, shall prepare with reference to that year a balance-sheet and profit and loss account as on the last working day of the year in the Forms set out in the Third Schedule or as near thereto as circumstances admit:

Provided that in the case of a banking company incorporated outside the Provinces of India, the profit and loss account may be prepared as on a date not earlier than two months before the last working day of the year.

(2) The balance-sheet and profit and loss account shall be signed—

(a) in the case of a banking company incorporated in a Province of India, by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors, and

(b) in the case of a banking company incorporated outside the Provinces of India by the manager or agent of the principal officer of the company in the Provinces of India.

(3) Notwithstanding that the balance-sheet of a banking company is under sub-section (1) required to be prepared in a form other than the form marked F in the Third Schedule to the Indian Companies Act, 1913 (VII of 1913), the requirements of that Act relating to the balance-sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance-sheet or profit and loss account, as the case may be, of a banking company.

(4) The Central Government, after giving not less than three months' notice of its intention so to do by a notification in the official Gazette, may from time to time by a like notification amend the Forms set out in the Third Schedule.

30. Audit.—(1) The balance-sheet and profit and loss account prepared in accordance with section 29 shall be audited—

(a) in the case of a banking company incorporated in a Province of India, by a person duly qualified under any law for the time being in force to be an auditor of companies;

(b) in the case of a banking company incorporated outside the Provinces of India, either by such an auditor as aforesaid, or by a person duly qualified to be an auditor under the law of the country in which the company is incorporated.

(2) The Auditor shall have the powers of exercise the functions vested in and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act, 1913 (VII of 1913).

(3) In addition to the matters which under the aforesaid Act the auditor is required to state in his report, he shall, in the case of a banking company incorporated in a Province of India, state in his report,—

(a) whether or not the information and explanations required by him have been found to be satisfactory;

(b) whether or not the transactions of the company which have come to his notice have been within the powers of the company;

(c) whether or not the returns received from branch offices of the company have been found adequate for the purposes of his audit;

(d) whether the profit and loss account shows a true balance of profit and loss for the period covered by such account;

(e) any other matter which he considers should be brought to the notice of the shareholders of the company.

31. Submission of returns.—The accounts and balance-sheet referred to in section 29 together with the auditor's report shall be published in the prescribed manner, and three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer:

Provided that the Reserve Bank may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months.

32. Copies of balance-sheets and accounts to be sent to registrar.—(1) Where a banking company in any year furnishes its balance-sheet and accounts in accordance with the provisions of section 31 it may, or when it is a private company, * shall, at the same time send to the registrar three copies of such balance-sheet and accounts and of the auditor's report, and where such copies are so sent, it shall not be necessary for the company, to file copies of the balance-sheet and accounts with the registrar as required by sub-section (1) of section 184 of the Indian Companies Act, 1913 (VII of 1913), and such copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section.

(2) When in pursuance of sub-section (2) of section 27 the Reserve Bank requires any additional statement or information in connection with the balance-sheet and accounts furnished under section 31, the banking company shall, when supplying such statement or information, send a copy thereof to the registrar.

33. Display of audited balance-sheet by companies incorporated outside the Provinces of India.—Every banking company incorporated outside the Provinces of India, shall, not later than the first Monday in August of any year in which it carries on business, display in a conspicuous place in its principal office and in every branch office in the Provinces of India a copy of its last audited balance-sheet and profit and loss account prepared under section 29, and shall keep the copy so displayed until replaced by a copy of the subsequent balance sheet and profit and loss account so prepared, and every such banking company shall display in like manner copies of its complete audited balance-sheet and profit and loss account relating to its banking business as soon as they are available and shall keep the copies so displayed until copies of such subsequent accounts are available.

34. Accounting provisions of this Act not retrospective.—Nothing in this Act shall apply to the preparation of accounts by a banking company and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act

35. Inspection.—(1) Notwithstanding anything to the contrary contained in section 188 of the Indian Companies Act, 1913 (VII of 1913), the Reserve Bank at any time may, and on being directed so to do by the Central Government shall, cause an inspection to be made by one or more of its officers of any banking company and its books and accounts; and the Reserve Bank shall supply to the banking company a copy of its report on such inspection.

(2) It shall be the duty of every director or other officer of the banking company to produce to any officer making an inspection under sub-section (1) all such books, accounts and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

(3) Any person making an inspection under sub-section (1) may examine on oath any director or other officer of the banking company in relation to its business, and may administer an oath accordingly.

(4) The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, and may, in any other case, report to the Central Government on any inspection made under this section, and the Central Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may, after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing—

(a) prohibit the banking company from receiving fresh deposits;

(b) direct the Reserve Bank to apply under section 88 for the winding up of the banking company:

Provided that the Central Government may defer, for such period as it may think fit, the passing of an order under this sub-section, or cancel or modify any such order, upon such terms and conditions as it may think fit to impose.

(5) The Central Government may, after giving reasonable notice to the banking company, publish the report submitted by the Reserve Bank or such portion thereof as may appear necessary.

33. Further powers and functions of Reserve Bank.—(1) The Reserve Bank may—

(a) caution or prohibit banking companies generally or any banking company in particular against entering into any particular transaction or class of transactions, and generally give advice to any banking company;

(b) on a request by the companies concerned and subject to the provisions of section 45, assist as intermediary or otherwise, in proposals for the amalgamation of such banking companies;

(c) give assistance to any banking company by means of the grant of a loan or advance to it under clause (3) of section 18 of the Reserve Bank of India Act, 1934 (II of 1934);

(d) during the course, or after the completion, of any inspection of a banking company under section 35, by order in writing, require the company—

(i) to call a meeting of its directors for the purpose of considering any matter arising in the course of or out of such inspection or of meeting an officer of the Reserve Bank to discuss any such matter;

(ii) to make, within such time as may be specified in the order, such changes in its management as the Reserve Bank may consider necessary in consequence of the state of affairs disclosed during or by the inspection.

(2) The Reserve Bank shall make an annual report to the Central Government on the trend and progress of banking in the country, with particular reference to its activities under clause (2) of section 17 of the Reserve Bank of India Act, 1934, including in such report its suggestions, if any, for the strengthening of banking business throughout the country.

(3) The Reserve Bank may appoint such staff at such places as it considers necessary for the scrutiny of the returns, statements and information furnished by banking companies under this Act, and generally to ensure the efficient performance of its functions under this Act.

PART III

SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES

37. Suspension of business.—(1) The Court may on the application of a banking company which is temporarily unable to meet its obligations make an order (a copy of which it shall cause to be forwarded to the Reserve Bank) staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may from time to time extend the period up to a total period not exceeding six months in all.

(2) No such application shall be maintainable unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted:

Provided that the Court may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report and where such relief is granted, the Court shall call for a report from the Reserve Bank on the affairs of the banking company, on receipt of which it may either rescind any order already passed or pass such further orders thereon as may be just and proper in the circumstances.

38. Winding up by Court.—(1) Without prejudice to the provisions contained in section 162 or section 271 of the Indian Companies Act, 1913 (VII of 1913), and without prejudice to its powers under section 37, the Court shall order the winding up of a banking company if it is unable to pay its debts and the Court shall also order the winding up of a banking company if the Reserve Bank applies in this behalf to the Court.

(2) The Reserve Bank may make an application under this section only if it is directed so to do by order under clause (b) of sub-section (4) of section 35 or if the banking company has failed to comply within due time with the demand contained in a notice under sub-section (5) of section 46.

(3) Without prejudice to the provisions contained in section 163 of the Indian Companies Act, 1913 (VII of 1913), a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand for payment made at any of its offices or branches within two working days if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days if such demand is made elsewhere, and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.

(4) A copy of every application by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the registrar.

39. Reserve Bank to be official liquidator.—Notwithstanding anything contained in section 175 of the Indian Companies Act, 1913 (VII of 1913), where in any proceeding for the winding up by the Court of a banking company, an application is made by the Reserve Bank in this behalf, the Reserve Bank shall be appointed as the official liquidator of the banking company in such proceeding.

40. Stay of proceedings.—Notwithstanding anything to the contrary contained in section 178 of the Indian Companies Act, 1913 (VII of 1913), the Court shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the Court is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

41. Report of liquidator.—Notwithstanding anything to the contrary contained in section 177B of the Indian Companies Act, 1913 (VII of 1913), where a winding up order is made in respect of a banking company, the official liquidator shall submit a preliminary report to the Court within two months from the date of the order giving the information required by that section so far as it is available to him, to enable the Court to order the payment of a preliminary dividend if sufficient assets are available.

42. Power to dispense with meetings of creditors, etc.—Notwithstanding anything to the contrary contained in sections 178A and 183 of the Indian Companies Act, 1913 (VII of 1913), the Court may in the proceedings for winding up a banking company dispense with any meetings of creditors or contributories or with the appointment of a committee of inspection if it considers that no object will be secured thereby sufficient to justify the delay and expense.

43. Booked depositors' credits to be deemed proved.—Notwithstanding anything to the contrary contained in section 191 of the Indian Companies Act, 1913 (VII of 1913), the Court shall presume that the amounts shown in the books of a banking company as standing to the credit of depositors are proved without requiring further proof from the depositors concerned unless the official liquidator shows that there is reason for doubting any particular entry.

44. Restriction on voluntary winding up.—Notwithstanding anything to the contrary contained in section 203 of the Indian Companies Act, 1913 (VII of 1913), no banking company which holds a licence granted under section 22 may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue, and without prejudice to the provisions contained in sections 218 and 220 of that

Act, the Court shall, on the application of the Reserve Bank, order the winding up of the company by the Court if at any stage during the voluntary winding up proceedings the company is not able to meet such debts as they accrue.

45. Restriction on amalgamation, etc.—Notwithstanding anything contained in any law for the time being in force,—

(a) no Court shall sanction a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them, unless the compromise or arrangement is certified by the Reserve Bank as not being detrimental to the interests of the depositors of such company, and

(b) no banking company shall enter into any agreement or arrangement for, or be a party to, any scheme for the amalgamation of such company with any other banking company without the previous sanction in writing of the Reserve Bank.

PART IV

MISCELLANEOUS

46. Penalties.—(1) Whoever in any return, balance-sheet or other document required by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any person fails to produce any book, account or other document or to furnish any statement or information which under sub-section (2) of section 35 it is his duty to produce or furnish or to answer any question relating to the business of a banking company which he is asked by an officer making an inspection under that section, he shall be punishable with a fine which may extend to five hundred rupees in respect of each offence, and if he persists in such refusal, to a further fine which may extend to fifty rupees for every day during which the offence continues.

(3) If any deposits are received by a banking company in contravention of an order under clause (a) of sub-section (4) of section 35, every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be deemed to be guilty of such contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received.

(4) If any other provision of this Act is contravened, or if any default is made in complying with any requirement of this Act or of any order made thereunder, every director and other officer of the banking company who is knowingly a party to the contravention or default shall be punishable with a fine not exceeding five hundred rupees, and where the contravention or default is a continuing one with a further fine not exceeding fifty rupees for every day during which it continues.

(5) Without prejudice to the provisions of sub-section (4), if any banking company fails to comply with the provisions of section 24 or section 25, the Reserve Bank shall by notice in writing make a demand on the banking company to comply with the said provisions within thirty days from the receipt of the notice, and if the banking company fails so to do, the Reserve Bank may apply under section 38 for the winding up of the banking company.

47. Cognizance of offences.—No Court shall take cognizance of any offence punishable under section 46 except upon complaint in writing made by an officer of the Reserve Bank generally or specially authorised in writing in this behalf by the Reserve Bank, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

48. Application of fines.—A Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

49. Special provisions for private banking companies.—The exemptions, whether express or implied, in favour of a private company in sections 17, 77, 88B, 88H, 91B, and 91D, and sub-section (5) of section 144 of the Indian Companies Act, 1913 (VII of 1913), shall not operate in favour of a private company which is a banking company.

50. Certain claims for compensation barred.—No person shall have any right whether in contract or otherwise to any compensation for any loss incurred by reason of the operation of any of the provisions contained in sections 10 and 16 or by reason of the compliance by a banking company with any order given to it under sub-clause (ii) of clause (d) of sub-section (1) of section 36.

* * * * *

51. Application of certain provisions to the Imperial Bank of India.—Without prejudice to the provisions of the Imperial Bank of India Act, 1920 (XLVII of 1920), the provisions of sections 10, 18 to 17, 19 to 21, 23 to 31, 34 to 48, 50 and 52 shall also apply, so far as may be,* to and in relation to the Imperial Bank of India as they apply to and in relation to other banking companies.

52. Power of Central Government to make rules.—(1) The Central Government may, after consultation with the Reserve Bank, make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act and all such rules shall be published in the official Gazette.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the details to be included in the returns required by this Act and the manner in which such returns shall be submitted.

(3) All rules made under this section shall be * * * subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than six months from the date on which the draft of the proposed rules was published:

Provided that in respect of the first occasion on which rules are made under this section, the provisions of this sub-section shall not apply.

53. Power to exempt in certain cases.—The Central Government may, on the recommendation of the Reserve Bank, declare by notification in the official Gazette that any or all of the provisions of this Act shall not apply to any banking company or to any class of banking companies either generally or for such period as may be specified.

54. Amendment of Act II of 1934.—The Reserve Bank of India Act, 1934 (II of 1934) shall be amended in the manner specified in the fourth column of the First Schedule and the amendments to section 18 thereof as specified in the said Schedule shall be deemed to have had effect on and from the 20th day of September, 1947.

55. Repeals.—(1) The enactments mentioned in the third column of the Second Schedule shall be repealed to the extent specified in the fourth column thereof.

(2) Notwithstanding the repeal by this Act of any Ordinance mentioned in the Second Schedule, anything done or any action taken, in the exercise of any power conferred by any Ordinance so repealed, shall for all purposes be deemed to have been done or taken in the exercise of powers conferred by this Act as if this Act had been in force on the day such thing was done or such action was taken.

THE FIRST SCHEDULE

(See section 54)

AMENDMENTS

Year	No.	Short title	Amendments
1	2	3	4
1934	II	The Reserve Bank of India Act, 1934.	<p>(1) In section 17, to clause (15A), the following shall be added, namely :—</p> <p>“and under the Banking Companies Act, 1949”.</p> <p>(2) (a) Section 18 shall be renumbered as sub-section (1) of that section and in sub-section (1), as so renumbered,—</p> <p>(i) in clause (3), after the words “of that section”, the following words shall be added, namely :—</p> <p>“or, when the loan or advance is made to a banking company, as defined in the Banking Companies Act, 1949, against such other form of security as the Bank may consider sufficient”;</p> <p>(ii) for the words “under this section”, wherever they occur, the words “under this sub-section” shall be substituted;</p> <p>(b) After sub-section (1) as so renumbered, the following sub-section shall be inserted, namely :—</p> <p>“(2) Where a banking company to which a loan or advance has been made under the provisions of clause (3) of sub-section (1) is wound up, any sums due to the Bank in respect of such loan or advance, shall, subject only to the claims, if any, of any other banking company in respect of any prior loan or advance made by such banking company against any security, be a first charge on the assets of the banking company.”</p> <p>(3) In section 42, for sub-section (d) the following sub-section shall be substituted, namely :—</p> <p>“(d) The Bank shall, save as herein-after provided, by notification in the Gazette of India,—</p> <p>(a) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in any Province of India and which—</p> <p>(i) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and</p>

Year.	No.	Short title	Amendments
1	2	3	4
			<p>(ii) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interests of its depositors, and</p> <p>(iii) is a company as defined in clause (2) of section 2 of the Indian Companies Act, 1913 (VII of 1913) or a corporation or a company incorporated by or under any law in force in any place outside the Provinces of India;</p> <p>(b) direct the exclusion from that Schedule of any scheduled bank,—</p> <p>(i) the aggregate value of whose paid-up capital and reserves becomes at any time less than five lakhs of rupees, or</p> <p>(ii) which is, in the opinion of the Bank after making an inspection under section 35 of the Banking Companies Act, 1949, conducting its affairs to the detriment of the interests of its depositors, or</p> <p>(iii) which goes into liquidation or otherwise ceases to carry on banking business;</p> <p>Provided that the Bank may on application of the scheduled bank concerned and subject to such conditions if any, as it may impose, defer the making of a direction under sub-clause (i) or sub-clause (ii) of clause (b) for such period as the Bank considers reasonable to give the scheduled bank an opportunity of increasing the aggregate value of its paid-up capital and reserves to not less than five lakhs of rupees or, as the case may be, of removing the defects in the conduct of its affairs;</p> <p>(c) alter the description in that Schedule whenever any scheduled bank changes its name.</p> <p><i>Explanation.</i>—In this sub-section the expression "value" means the real or exchangeable value and not the nominal value which may be shown in the books of the bank concerned; and if any dispute arises in computing the aggregate value of the paid-up capital and reserves of a bank, a determination thereof by the Bank shall be final for the purposes of this sub-section."</p>

THE SECOND SCHEDULE

(See section 55)

REPEALS

Year	No.	Short title	Extent of repeal
1	2	3	4
1913	VII	The Indian Companies Act, 1913.	The whole of Part XA.
1946	XXVII	The Banking Companies (Restriction of Branches) Act, 1946.	The whole.
1946	IV	The Banking Companies (Inspection) Ordinance, 1946.	The whole.
1948	XXV	The Banking Companies (Control) Ordinance, 1948.	The whole.

THE THIRD SCHEDULE

(See section 29)

FORM A

FORM OF BALANCE-SHEET*

CAPITAL AND LIABILITIES

PROPERTY AND ASSETS

Rs. A. P. Rs. A. P.

Rs. A. P. Rs. A. P.

FITAL (a)—

Authorised Capital
 Shares of Rs. each

Issued Capital Shares
 of Rs. each

Subscribed Capital
 Shares of Rs. each

Amount called up at Rs. . . .
 per share
 Less calls unpaid

Add forfeited shares

RESERVE FUND (b)
 DEPOSITS AND OTHER AC-
 COUNTS:

Fixed Deposits
 Savings Bank Deposits
 Current Accounts and Contingency (unadjusted) accounts.

Borrowings from other Banks,
 Agents, etc.:
 (i) in the Provinces of India
 (ii) outside the Provinces of India.

Particulars:

(i) Secured (stating the nature of security)

(ii) Unsecured

Bills payable
 Bills for collection being bills receivable as *per contra*;

(i) payable in any Province of India

(ii) payable outside the Provinces of India.

CASH:

In hand and with Reserve Bank (including foreign currency notes)

Balances with other Banks (showing whether on deposit or current account):
 (i) in the Provinces of India.

(ii) outside the Provinces of India

MONEY AT CALL AND SHORT NOTICE

BILLS DISCOUNTED AND PURCHASED (c).

(Other than Treasury Bills of the Central and Provincial Governments) .

(i) Payable in any Province of India.

(ii) Payable outside the Provinces of India

INVESTMENTS (stating mode of valuation, e.g., cost or market value) ** (f)

(i) Government of India and Trustee securities including Treasury Bills of Government of India and Provincial Governments.

(ii) Shares (classifying into preference, ordinary, deferred and other classes of shares and showing separately shares fully paid up and partly paid up)

(iii) Debentures or Bonds.

(iv) Other investments (to be classified under proper heads)

(v) Gold

LOANS, ADVANCES, CASH CREDITS AND OVERDRAFTS (other than bad and doubtful debts for which provision has been made to the satisfaction of the auditors)

(i) in the Provinces of India

(ii) outside the Provinces of India.

FORM A—*contd.*

CAPITAL AND LIABILITIES

PROPERTY AND ASSETS

Rs. A. P. Rs. A. P.

Rs. A. P. Rs. A. P.

Other Liabilities (to be specified) (c)

Acceptances, endorsements and other obligations *per contra*.

PROFIT AND LOSS :

* * * * *

Less

* * * * *

* * * * *

CONTINGENT LIABILITIES (d)

Particulars :

(i) Debts considered good in respect of which the bank is fully secured

(ii) Debts considered good for which the bank holds no other security than the debtors' personal security

(iii) Debts considered good, secured by the personal liabilities of one or more parties in addition to the personal security of the debtors

(iv) Debts considered doubtful or had not provided for

(v) Debts due by directors or officers of the bank or any of them either severally or jointly with any other persons

(vi) Debts due by companies or firms in which the directors of the bank are interested as directors, partners or managing agents or, in the case of private companies, as members

(vii) Maximum total amount of loans, including temporary advances made at any time during the year to directors or managers or officers of the company.

(viii) Maximum total amount of loans, including temporary advances granted during the year to the companies or firms in which the directors of the bank are interested as directors, partners or managing agents or, in the case of private companies, as members

(ix) Due from banks. Bills for collection being bills receivable *per contra*.

(i) payable in any Province of India

(ii) payable outside the Provinces of India

Acceptances, endorsements and other obligations *per contra*.

FORM A—*cond.*

CAPITAL AND LIABILITIES

PROPERTY AND ASSETS

Premises less depreciation (g)
 Furniture and fixtures less depreciation (g) ...
 Other assets, including silver (to be specified) (h)
 Non-banking assets acquired in satisfaction of claims (stating mode of valuation) (i)
 PROFIT AND LOSS

TOTAL

TOTAL

NOTES

(a) *Capital :—*

- (i) The various classes of capital, if any, should be distinguished.
- (ii) Shares issued as fully paid-up pursuant to any contract without payments being received in cash should be stated separately.
- (iii) Where circumstances permit, issued and subscribed capital and amount called up may be shown as one item, e.g., Issued and Subscribed Capital.....Shares of Rs.....paid up.
- (iv) In the case of banking companies incorporated outside the Provinces of India, the amount of deposit kept with the Reserve Bank of India under sub-section (2) of section 11 of the Banking Companies Act, 1949, should be shown under this head the amount however should not be extended to the outer column.
- (b) The reserve fund maintained under section 17 of the said Act should be shown separately.
- (c) Under this heading are to be included such items as the following, to be shown under separate heading suitably described: pension or insurance funds, unclaimed dividends, advance payments and unexpired discounts, liabilities to subsidiary companies and any other liabilities.
- (d) These should be classified under the following categories :—
 - (i) Claims against the banking company not acknowledged as debts.
 - (ii) Money for which the bank is contingently liable showing separately the amount of any guarantee given by the banking company on behalf of directors or officers.
 - (iii) Arrears of cumulative preference dividends.
 - (iv) Liability on Bills of Exchange rediscounted.
 - (v) Liability on account of outstanding Forward Exchange Contracts.
- (e) Particulars as under "Loans, Advances, Cash Credits and Overdrafts" are to be shown under this heading;
- (f) Where the value of the investments shown in the outer column of the balance sheet is higher than the market value, the market value shall be shown separately in brackets.

(g) Bank premises wholly or partly occupied for the purposes of business should be shown against "Premises less depreciation." In the case of fixed capital expenditure, the original cost, and additions thereto and deductions therefrom during the year should be stated, as also the total depreciation written off. Where sums have been written off on a reduction of capital or revaluation of assets, every balance-sheet after the first balance-sheet subsequent to the reduction or revaluation should show the reduced figures with the date and amount of the reduction made. Furniture, fixtures and other assets which have been completely written off need not be shown in the balance-sheet.

(h) Under this heading may be included such items as the following, which must be shown under heading suitably described: preliminary, formation and organisation expenses, development expenditure, commission and brokerage on shares, interest accrued on investments but not collected, investments in shares of subsidiary companies and any other assets.

(i) Value shown shall in no case exceed market value.

*References to the Provinces of India shall be construed as including references to the Acceding States to which the Banking Companies Act, 1949 for the time being extends.

FORM B

FORM OF PROFIT AND LOSS ACCOUNT

Profit and Loss Account for the year ended

December

EXPENDITURE	INCOME (LESS PROVISION MADE DURING THE YEAR FOR BAD AND DOUBTFUL DEBTS)
Interest paid on deposits	Interest and Discount
Salaries and Allowances (showing separately salaries and allowances to managing director or manager.)	Commission, Exchange and Brokerage
Directors' Fees and allowances	Rents
Local Committee members' fees and allowances.	Transfer from contingencies account
Provident Fund	
Rent, * Taxes, Insurance, Lighting, etc.	Profit made on sale of investments, gold and silver, land, premises and other assets.
Law Charges	Profits made on revaluation of investments, gold and silver, land, premises and other assets.
Postage, Telegrams and Stamps	Income from non-banking assets, and profit from sale of or dealing with such assets.
Auditors' Fees	
Depreciation on Banks' Property	
Repairs to Banks' Property	
Stationery, Printing, Advertisement, etc.	
Loss from sale of or dealing with non-banking assets.	
Other Expenditure	Other receipts
Balance of Profit	Loss (if any)
Total	Total

The following Report of the Select Committee to which the Bill to make provision for the payment of taxes before transfers of property are recognised in certain cases, was presented to the Constituent Assembly of India (Legislative) on the 10th February, 1949:—

We, the undersigned members of the Select Committee to which the Bill to make provision for the payment of taxes before transfers of property are recognised in certain cases was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed hereto.

2. The object of the Bill, as described in the Statement of Objects and Reasons, is to safeguard the loss of revenue in the case of persons who dispose of their properties with the intention of leaving India and settling somewhere else. But the provisions of the Ordinance, which the present Bill seeks to replace, are so wide that they affect all transactions relating to the registration of any document relating to immovable property, and to this we take serious objection. In our opinion, the present Bill should be confined to persons who have left or leave India with the intention of settling elsewhere.

In this connection, some of us feel that a provision corresponding to section 44G of the Pakistan Income-tax Act requiring a tax-clearing certificate from every non-national leaving the country should be introduced into our law with immediate effect, but on further consideration we felt that such a provision should more appropriately be included in the Bill to amend the Indian Income-tax Act, 1922, which is said to be under the contemplation of the Government.

Old clause 1(3).—As the Ordinance has already been made applicable to all the Provinces of India, we have decided to delete sub-clause (3).

Clause 2.—This is new. We have now confined the scope of the Bill (1) to persons who are known as “evacuees” in other relevant laws, and (2) to persons who are about to leave India with the intention of settling elsewhere and in respect of whom a declaration in that behalf has been received from any Income-tax authority, Custodian of Evacuee Property or a Collector by the registering officer of the area where any property belonging to such person is situate.

Clause 3 (old clause 2).—References to the revenue officer and custodian have been deleted from this clause. Otherwise, this clause is a substantial reproduction of old clause 2. We, however, felt that the Income-tax officer should not have power to prevent a document from being registered, if the recovery of taxes will not thereby be prejudicially affected. We have recast clause (c) of sub-clause (1) accordingly. Further we have substituted the Income-tax Officer for the Inspecting Assistant Commissioner of Income-tax as the officer authorised to issue the certificate, because we feel that delay in the issue of certificates would thereby be avoided. Where such a certificate is refused, the Income-tax Officer has now to make an order in writing, so that it can be appealed from.

Clause 4 (old clause 3).—We think that clause 8 of the original Bill should be retained, but should be restricted in its operation to persons to whom this Act now applies. We have substituted the date 7th day of February, 1948, for the date 14th day of August, 1947, because the former date is the date on which the Ordinance was first promulgated and, therefore, there can be no cause for complaint as respects the retrospective operation now being given to this provision.

Clause 5 (new).—We have provided a right of appeal in cases where the Income-tax Officer refuses to issue a certificate under sub-clause (3).

Clause 8 (new).—In our opinion, a rule-making clause in the Bill would be desirable.

Clause 9 (old clause 6).—Now that Ordinance XXI of 1948 has expired, we have recast this clause so as to attract the provisions of section 6 of the General Clauses Act, 1897.

3. The Bill was published in Part V of the Gazette of India, dated the 28th August, 1948.

4. We think that the Bill has not been so altered as to require circulation under rule 49(5) of the Rules of Procedure and Conduct of Business, and we recommend that it be passed as now amended.

JOHN MATTHAI.
T. T. KRISHNAMACHARI.
TEK CHAND.
BIKRAM LAL SONDHU.
THAKUR DAS BHARGAVA.
K. HANUMANTHAIYA.
MAHAVIR TYAGI.
*RENUKA RAY.
HUKAM SINGH.
DESHBANDHU GUPTA.
*N. G. RANGA.
*B. DAS.
*L. K. BHARATHI.
M. ANANTHASAYANAM AYYANGAR.
TAJAMUL HUSSAIN.

NEW DELHI;

• The 10th February, 1949.

*Subject to a Minute of Dissent.

MINUTES OF DISSENT.**I**

I do not agree with the changes made by the Select Committee in the original clause 2 of the Bill so as to limit its application only to evacuees and those who are likely to leave the country. During the working of the Ordinance which the Bill is supposed to replace, the Income-tax Department have incidentally been able to rope in a number of non-evacuee tax defaulters and the revenue obtained by this action is considerable.

We have been informed that 8 non-muslim assesseees of Madras and 2 from Calcutta who owe Rs. 57,00,000 and Rs. 3,00,000 of taxes respectively, have been prevented from disposing of their property. In Calcutta and Bombay, the Ordinance has helped the Government to realise a considerable amount from outstanding taxes from some non-evacuees who had applied for tax clearance certificates.

I believe that middle-class people who might have been harassed by the over-all application of a measure like this Ordinance, should be exempted from the operation of the Bill by putting a limit of income to Rs. 25,000/- and above to which class of people the Bill should apply. I am averse to allowing full freedom to await payment of taxes to all people who are not likely to come within the new clause as amended by the Select Committee until such time as the income-tax law is amended so as to take advantage of the experience gained by the Department while the Ordinance was in force.

RENUKA RAY.

NEW DELHI,

The 10th February, 1949.

II

I am not in favour of this Bill at all in view of its immense capacity for inconveniencing thousands of people for every one who really ought to be dealt with. Secondly I suggest that none whose name has not been on the list of income-tax payees shall be expected to produce such a certificate, until and unless a specific demand to that effect by an Income-tax Officer. The burden of proving that anyone who has not been an income-tax payee that he may have to pay income-tax for the current year must be placed on the Income-tax Officer. Thirdly it may be better to stipulate an exemption limit on the value of property for which it may not be necessary to produce such a certificate.

N. G. RANGA.

NEW DELHI,

The 10th February, 1949.

III

I am unable to agree to the change of date in the operating clause of the Bill—clause 4 of the Bill (old clause 8)—from “after 14th day of August, 1947” to “after 7th February, 1948”, the date of promulgation of the Ordinance. Already properties of transferees have been assessed and taxes have been collected in most cases. It is only the dishonest tax-dodging transferees that have not paid up the taxes would get relief contrary to the spirit of the Ordinance or the spirit of the present Bill. No premium should be given to such dishonest transactions after 14th August, 1947, nor should there be any sympathy shown directly or indirectly to such transferees.

B. DAS.

NEW DELHI,

The 10th February, 1949.

IV

I am not in agreement with the majority view of the Committee in regard to the amendment of clause 3 of the original Bill which corresponds to clause 4 of the amended Bill. The result of their amendment would be that certain persons who either because of collusion with, or on account of inadvertance on the part of, the registering authority, had succeeded in effecting a transfer of property without production of no-demand of clearance certificates, in contravention of the Ordinance then in force, would escape the consequences of their wrong doing, if the irregularity has not *already* come to the notice of the Income-tax Officer and challenged by him under section 3 of the Ordinance which was in force until the 6th February 1949. In Calcutta alone, such instances of irregular registration of transfers of property by 3 persons from whom tax amounting to Rs. 23 lakhs is due have come to the notice of the Income-tax Department, and there is no knowing how many more such cases might not have occurred in Calcutta and elsewhere. I feel, therefore, that even if, for the future, the provisions of the Bill are to apply to the limited class of persons mentioned in the new clause 2 of the amended Bill, the provisions of the renumbered Clause 4 ought to be applied to *all* persons who may have secured registrations for transfer of property since the 7th February 1948, *in contravention of the Ordinance then in force. As it is, the* amendments made by the majority of the Select Committee are likely to have the effect of helping persons to defeat the just dues of Government by contravening the Ordinance. I reserve to myself the right to move a suitable amendment.

L. KRISHNASWAMI BHARATHI.

NEW DELHI,

The 10th February, 1949.

A. BILL No. 65 OF 1948.

(AS AMENDED BY THE SELECT COMMITTEE)

[Words *sidelined* or *underlined* indicate the amendments suggested by the Select Committee; *asterisks* indicate omissions.]

A

BILL

to make provision for the payment of taxes before transfers of property are registered in certain cases.

WHEREAS it is expedient to make provision for the payment of taxes before transfers of property are registered in certain cases;

It is hereby enacted as follows:—

1. **Short title and extent.**—(1) This Act may be called the Payment of Taxes (Transfer of Property) Act, 1949.

(2) It extends to all the Provinces of India

* * * * *

2. **Application of Act.**—This Act shall apply to any person—

(i) who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances, leaves or has, since the 14th day of August, 1947, left any place in the Provinces of India for any place outside India, or who, since the said date, has been residing in any place outside India; or

(ii) who, in the opinion of any of the Income-tax authorities specified in sub-section (1) of section 5 of the Indian Income-tax Act, 1922 (XI of 1922), or a Custodian of Evacuee Property or a Collector, is likely to leave the Provinces of India with the intention of settling in any place outside the Provinces of India, and in respect of whom a declaration that he is a person to whom this Act applies has been received from any such Income-tax authority, Custodian of Evacuee Property or Collector by the registering officer of the area in which any property belonging to such person is situate.

3. Payment of taxes before registration of documents.—(1) Where any document required to be registered under the provisions of clause (a), clause (b), clause (c) or clause (e) of sub-section (1) of section 17 of the Indian Registration Act, 1908 (XVI of 1908), purports to transfer, assign, limit or extinguish any right, title or interest in any property, other than agricultural land, belonging to any person to whom this Act applies, no registering officer appointed under the said Act shall register any such document, unless it is certified by the Income-tax Officer of the area in which the property is situate in respect of the person whose right, title or interest in the property is to be so transferred, assigned, limited or extinguished under the terms of the document that—

(a) such person is not liable to assessment or taxation under the Indian Income-tax Act, 1922 (XI of 1922), the Excess Profits Tax Act, 1940 (XV of 1940), or the Business Profits Tax Act, 1947 (XXI of 1947); or

(b) such person has either paid or made satisfactory provision for the payment of all existing or anticipated liabilities under any of the Acts specified in clause (a) of this sub-section; or

(c) the Income-tax Officer is otherwise satisfied that the registration of the document will not prejudicially affect the recovery of all existing or anticipated liabilities referred to in clause (b) of this sub-section.

(2) Every Income-tax Officer refusing to issue a certificate under the provisions of sub-section (1) shall make an order of refusal and record his reasons therefor and, on application made by any person claiming to be affected by such order, shall, subject to the payment of such fee as may be prescribed, furnish him with a copy of the order.

4. Recovery of taxes where property has been transferred without a certificate.—(1) Where in respect of the transfer made on or after the seventh day of February, 1948, in the Provinces of Bombay, West Bengal, East Punjab, Bihar, Delhi and Ajmer-Merwara, and in any other Province on or after the date on which the Transfer of Property (India) Ordinance 1948 (II of 1948) was made applicable to that Province, of any right, title or interest in any immovable property, other than agricultural land, belonging to any person to whom this Act applies, the Income-tax Officer of the area where the property is situate is satisfied, after giving such person notice in this behalf for a period of not less than one month, that no certificate in the terms mentioned in section 3 would have been issued to him if this Act had been in force on the date the transfer was made, he may forward a statement to the Collector showing the existing and anticipated liabilities by way of taxes in respect of all or any of the parties to the transfer.

(2) On receipt of any statement under sub-section (1), the Collector shall proceed to recover the total amount shown in such statement as if it were an

arrear of land revenue, and for the purpose of such recovery proceedings he may treat the property transferred as aforesaid as if it belonged to all or any of the persons named in the statement.

5. Right of appeal.—An appeal shall lie against the order of any Income-tax Officer refusing to issue a certificate under the provisions of sub-section (2) of section 3 to the Commissioner of Income-tax to whom the Income-tax Officer is subordinate, if presented to such Commissioner within thirty days from the date of the order, and the Commissioner may pass such orders thereon as he may think fit.

6. Effect of Act over other laws.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

7. Bar of suits.—No suit, prosecution or other legal proceeding shall lie against the Central Government * * * or any person or authority in respect of anything which is in good faith done or intended to be done under this Act.

8. Power to make rules.—The Central Government may make rules for the purpose of carrying into effect the objects of this Act, and, in particular, prescribe the fee payable under sub-section (2) of section 3.

9. Effect of expiry of Ordinance XXI of 1948.—On the expiry of the Payment of Taxes (Transfer of Property) Ordinance, 1948 (XXI of 1948), section 6 of the General Clauses Act, 1897 (X of 1897) shall apply as if the Ordinance had then been repealed by a Central Act.

M. N. KAUL,

Secy. to the Govt. of India.

The following Bill was introduced in the Constituent Assembly of India, (Legislative) on the 22nd February, 1949:—

A. BILL NO. 16 OF 1949.

A Bill to provide for exempting the reduced salary of the Governor-General from taxes on income.

WHEREAS paragraph one of the Third Schedule to the Government of India Act, 1935 (26 Geo. 5, c. 2) provides that there shall be paid to the Governor-General an annual salary of 2,50,800 rupees;

AND WHEREAS the Governor-General and his Council of Ministers have agreed that notwithstanding the above provision, the Governor-General will, with effect from the 1st day of January, 1949, draw salary at a rate not exceeding 5,500 rupees per month and that the reduced salary will be exempt from taxes on income;

AND WHEREAS it is expedient to provide for exempting from taxes on income the reduced salary of the Governor-General;

It is hereby enacted as follows:—

1. Short title.—This Act may be called the Governor-General's Salary (Exemption from Taxation) Act, 1949.

2. Reduced salary of the Governor-General to be exempt from taxes on income.—Notwithstanding anything contained in the Indian Income-tax Act, 1922 (XI of 1922), or in any other law relating to taxation on income, no income-tax or super-tax shall be payable by the Governor-General in respect of the

salary due to him (whether paid or not) for any period for which he draws salary at a rate not exceeding 5,500 rupees per month, and the salary so due (whether paid or not) shall not be included in his total income.

3. Repeal of Ordinance IV of 1949.—The Governor-General's Salary (Exemption from Taxation) Ordinance, 1949 (IV of 1949), is hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

His Excellency, the Governor-General had some months ago raised the question of an immediate reduction in his salary, and proposed that it might be fixed at Rs. 5,500 a month, which is the salary proposed for the President of the Union under the new Constitution. After a careful consideration of His Excellency's proposal, Government agreed to accept it and further decided that, having regard to the high office and dignity of the position of the head of the State, the salary drawn at the reduced rate of Rs. 5,500 a month should be free of taxes.

An Ordinance called the Governor-General's Salary (Exemption from Taxation) Ordinance, 1949 (IV of 1949) was promulgated to give effect to the agreement from 1st January, 1949. The object of the present Bill is to replace the Ordinance by an Act.

V. J. PATEL.

NEW DELHI;

The 15th February, 1949.

A. BILL NO. 17 OF 1949.

A Bill to amend the Dock Workers (Regulation of Employment) Act, 1948.

WHEREAS it is expedient to amend the Dock Workers (Regulation of Employment) Act, 1948 (IX of 1948), for the purpose hereinafter appearing;

It is hereby enacted as follows:—

1. Short title.—This Act may be called the Dock Workers (Regulation of Employment) Amendment Act, 1949.

2. Amendment of section 3, Act IX of 1948.—For clause (j) of sub-section (2) of section 3 of the Dock Workers (Regulation of Employment) Act, 1948, the following clause shall be substituted, namely:—

“(j) for constituting, whether as a body corporate or otherwise, the authority to be responsible for the administration of the scheme;”

STATEMENT OF OBJECTS AND REASONS

A scheme made by the appropriate Government under the Dock Workers (Regulation of Employment) Act, 1948, may, *inter alia*, provide “for constituting or prescribing the authority to be responsible for the administration of the scheme”. The constituted authority in the discharge of its functions may have to borrow or raise money and issue debentures, etc., for the purpose of securing any debt or mortgaging or charging any of its property and it is therefore desirable that the authority should be clothed with a corporate status in certain cases. As the Act does not in express terms confer power to create a Corporation or to give corporate status to any body functioning under it, a specific amendment of the Act is being undertaken for this purpose.

JAGJIVAN RAM.

NEW DELHI;

The 9th February, 1949.

M. N. KAUL,
Secy. to the Govt. of India.